

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
THE CITY OF TACOMA TO THE PORT)
OF TACOMA (HYLEBOS MARINE TERMINAL))
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY and)
SLADE GORTON, ATTORNEY)
GENERAL,)

Appellants,)

vs.)

CITY OF TACOMA and PORT OF)
TACOMA,)

Respondents.)

SHB No. 72

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being a request for review of the issuance of a
shoreline management substantial development permit; having come on
regularly for hearing before the Shorelines Hearings Board on the
8th and 9th of February, 8th, 9th, 19th, 20th and 21st days of March
1974, at Tacoma, Washington; and appellants, Washington State Department
of Ecology and Attorney General, appearing through Robert V. Jensen,

1 Assistant Attorney General and respondent, City of Tacoma, appearing
2 through William J. Baker, Assistant City Attorney and respondent, Port
3 of Tacoma, appearing through its attorney, James J. Mason; and Board
4 members present at the hearing being W. A. Gissberg (presiding),
5 Mary Ellen McCaffree, Arden A. Olson, Robert F. Hintz, Walt Woodward
6 and Robert E. Beaty and the Board having considered the sworn testimony,
7 exhibits, post-hearing arguments, records and files herein and having
8 entered on the 4th day of September, 1974, its proposed Findings of
9 Fact, Conclusions of Law and Order, and the Board having served said
10 proposed Findings, Conclusions and Order upon all parties herein by
11 certified mail, return receipt requested and twenty days having elapsed
12 from said service; and

13 The Board having received no exceptions to said proposed Findings,
14 Conclusions and Order; and the Board being fully advised in the premises;
15 now therefore,

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
17 Findings of Fact, Conclusions of Law and Order, dated the 4th day of
18 September, 1974, and incorporated by this reference herein and attached
19 hereto as Exhibit A, are adopted and hereby entered as the Board's
20 Final Findings of Fact, Conclusions of Law and Order herein.

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26 , FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

1 DONE at Lacey, Washington, this 50th day of October, 1974.

2 SHORELINES HEARINGS BOARD

3 Walt Woodward
4 WALT WOODWARD, Chairman

5 W. A. Gissberg
6 W. A. GISSBERG, Member

7 Robert F. Hintz
8 ROBERT F. HINTZ, Member

9 Robert E. Beaty
10 ROBERT E. BEATY, Member

11 Arden A. Olson
12 ARDEN A. OLSON, Member

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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
THE CITY OF TACOMA TO THE PORT
OF TACOMA (HYLEBOS MARINE TERMINAL)

STATE OF WASHINGTON, DEPARTMENT OF
ECOLOGY, and SLADE GORTON, ATTORNEY
GENERAL,

Appellants,

vs.

CITY OF TACOMA and PORT OF TACOMA,

Respondents.

SHB No. 72

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AND ORDER

The above numbered request for review of the issuance of a shoreline management substantial development permit was consolidated for hearing purposes only with SHB Nos. 71, 75 and 76, and a hearing thereon was held at Tacoma, Washington on February 8th and 9th, May 8th, 9th and 19th, and May 20th and 21st, before Board members W. A. Gissberg (presiding),

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

-1-

EXHIBIT A

Mary Ellen McCaffree, Arden A. Olson, Robert F. Hintz, Walt Woodward, and Robert E. Beaty.

Appellants Washington State Department of Ecology and Attorney-General appeared through Robert V. Jensen, Assistant Attorney-General; respondent City of Tacoma appeared through William J. Barker, Assistant City Attorney, respondent Port of Tacoma appeared through its attorney, James J. Mason.

Having heard the testimony and considered the exhibits and post-hearing arguments, and being fully advised, the Board makes and enters these

FINDINGS OF FACT

I.

That any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

II.

The Port of Tacoma is a municipal corporation of the State of Washington. Its jurisdictional boundaries are coterminous with those of Pierce County.

III.

The Port of Tacoma owns and operates an extensive system of marine terminals, warehouses, and appurtenant structures and facilities in Commencement Bay. In recent years it has expanded such marine terminal facilities substantially to meet

the increasing requirements of water borne commerce. Such demand is increasing and the Port will be required to further expand its terminals if it is to accomodate it. After conducting a survey of various sites in the Commencement Bay area, the Port determined that the most suitable location for a new marine terminal was on the East shore of the Hylebos Waterway adjacent to and outside of the 11th Street Bridge crossing.

IV.

The terminal site selected by the Port consists of 75 acres, of which approximately 67 acres are in the intertidal zone. At all times herein relevant the Port has been the contract purchaser of such premises.

V.

The proposed marine terminal at the Hylebos Waterway site will have no significant adverse enviornmental effect.

VI.

The marine terminal is a major action which significantly affects the environment. The Port of Tacoma submitted a draft environmental impact statement, received comments thereon, and responded to such comments in a final environmental impact statement, all in proper form and in conformity with the Environmental Policy Act of 1971, R.C.W. Ch. 43.21C.

VII.

The marine terminal is a substantial devleopment on shorelines of this State. On December 18th, 1973 the City Council

of the City of Tacoma approved a substantial development permit for the marine terminal pursuant to the Shoreline Management Act of 1971, R.C.W. Ch. 90.58. The permit as issued complies with the Act and with the Guidelines of the Department of Ecology, W.A.C. 173-16-010 to 173-16-200, and the recommended Master Program for Shoreline Development of the City of Tacoma.

CONCLUSIONS OF LAW

I.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

II.

The Board has jurisdiction of the parties and of the subject matter.

III.

The substantial development permit granted for the Port of Tacoma marine terminal at the Hylebos Waterway site is consistent with the terms, purpose and interest of the Shoreline Management Act of 1971, R.C.W. 90.58.020, the Guidelines of the Department of Ecology, W.A.C. 173-16-019 to 173-16-200, and the Recommended Master Program for Shoreline Development of the City of Tacoma.

IV.

The environmental impact statement and other documents filed in support of the Port of Tacoma's application for a

substantial development permit for the marine terminal, together with the actions taken by the City of Tacoma with reference to such application, comply with the Environmental Policy Act of 1971, R.C.W. Ch. 43.21C.

V.

The proposed marine terminal at the Hylebos Waterway site and appurtenant structures, is a water dependent use of such site.

VI.

The action of the City Council of the City of Tacoma in granting the substantial development should be sustained, and the permit should be approved as valid.

ORDER

The action of the City Council of the City of Tacoma in granting the substantial development permit for the Port of Tacoma marine terminal at the Hylebos Waterway site is sustained. The permit is approved as valid.

DATED this 4th day of September, 1974.


SHORELINES HEARING BOARD

W. A. Gissberg

W. A. Gissberg
Did not participate
in this decision

Mary Ellen McCaffree

Arden A. Olson
Arden A. Olson



Robert F. Hintz


Walt Woodward


Robert E. Beaty

Presented by

BURKEY, MARSICO, ROVAI, McGOFFIN
TURNER & MASON

By: 
James J. Mason
Attorney for respondent
Port of Tacoma

Robert Hamilton, City Attorney,
City of Tacoma

By: _____
Assistant City Attorney

Approved As To Form and
Notice of Presentation Waived:

State of Washington, Department of
Ecology and Slade Gorton, Attorney
General

By: 
Assistant Attorney General

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
THE CITY OF EVERETT TO THE
PORT OF EVERETT,

ROBERT E. HAGGARD,

Appellant,

vs.

CITY OF EVERETT and PORT OF
EVERETT,

Respondents.

SHB No. 74

FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

A hearing on the request for review of appellant (Haggard) of the granting of a shoreline management substantial development permit by respondent, City of Everett, to respondent, Port of Everett, came on before Board member W. A. Gissberg (presiding) in Olympia, Washington commencing on August 14, 1973.

Marvin B. Durning appeared as attorney for appellant, but withdrew on December 29, 1973; Walter Sellers appeared for the City of Everett

1 (hereinafter City); Lewis A. Bell for the Port of Everett (hereinafter
2 Port).

3 After the hearing had been concluded on August 22, 1973 and each
4 party had rested its case, appellant Haggard filed his Motion herein
5 asking leave to admit certain additional evidence. On February 27,
6 1974 the Board partially granted that Motion by admitting Appellant's
7 Exhibit N-1a.

8 Having considered the exceptions, transcript, exhibits, arguments
9 and briefs, and being fully advised, the Board makes and enters these

10 FINDINGS OF FACT

11 I.

12 Any Conclusions of Law hereinafter recited which should be deemed
13 a Finding of Fact is hereby adopted as such.

14 II.

15 On April 27, 1973 the City issued to the Port a substantial
16 development permit to place fill material on Preston Point, sometimes
17 called Blackman's Point, (hereinafter site) which is at or near the
18 mouth of the Snohomish River where the tide ebbs and flows. The site
19 is zoned for manufacturing uses and is in an urban area of existing
20 heavy industrial plants. It is owned, in part, by the Port and is
21 situated within its boundaries.

22 Haggard's request for review was timely filed and certified by the
23 Department of Ecology and there is no contention to the contrary.

24 III.

25 The proposed fill would be on approximately seven acres of land,
26 of which four acres are uplands and three acres are tidelands, to

27 FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 accommodate a maximum of 60,000 cubic yards of fill (TR 3-199) to a
2 maximum height of 18 feet with the water or outer portion of the fill
3 sloping off naturally into the tidelands. Presently, that area of
4 the site over which the tide ebbs and flows is used for log storage
5 (TR 3-68). When the tide recedes, the area then exposed is
6 found to be composed of mud and decaying wood fiber (TR 3-70;
7 Respondent's Exhibit 2, Enclosure 2).

8 The existing shoreline of the site is eroding and that process
9 exposes wood chips and wood waste in the four acre upland area which
10 is now unimproved and covered by wild grass, willow trees and scrub
11 alders.

12 IV.

13 The fill to be deposited on the site is composed of clean sands
14 which have been approved by the Federal Environmental Protection
15 Agency for disposal in waters of the United States and which would
16 cover the "volatile solids" now thereon, thereby improving water quality
17 in the immediate vicinity. The site, if filled, could not be utilized
18 for heavy construction thereon without stabilization work of some kind
19 (TR 4-127).

20 V.

21 The Corps of Army Engineers has been authorized by Congress to
22 perform periodic maintenance dredging of the navigation channel of
23 the Snohomish River and has done so since 1912 (TR 3-170) in order to
24 keep the river channel 8 feet deep and 150 feet wide at low water. The
25 river is used by and for a variety of commerce and navigational purposes.
26 Because the last dredging of the river at or immediately above its

27 FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 mouth, took place in 1969, siltation is shoaling to the extent that
2 commerce and navigation is now restricted in its use of the river.
3 The Port, by its agreement with the Corps of Army Engineers, is
4 responsible for making sites available to the latter for the necessary
5 deposit of river dredgings. Preston Point is but one of several
6 disposal sites and was selected by reason of economics and the
7 immediate unavailability of other sites.

8 VI.

9 Jetty Island, owned by the Port, has been created since 1912 by
10 accretion, filling and spoil deposition taken from Everett Harbor and
11 the Snohomish River channel until now it is an area of some 160 acres.
12 There have been numerous studies made of what could be done to develop
13 Everett Harbor and the Jetty. Certain parts of the recommendations
14 of such studies have been adopted by the Port as part of its official
15 comprehensive plan, but the Port has not officially adopted as its
16 plan any proposals for the development of Jetty Island or Preston Point,
17 except to officially designate Preston Point as a site for the deposit
18 of spoils.

19 Some Port employees have promulgated studies and proposed plans
20 which envision the filling of Jetty Island and the construction of a
21 Preston Point bridge access to it. Preston Point could be, but does
22 not necessarily need to be, the east end of such vehicular and rail
23 bridge access.

24 Confusion does exist in the minds of some members of the public
25 as to the Port's "plan" for the development of Jetty Island. That
26 confusion has been caused by statements made by various Port

27 FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

representatives, ranging from the Tams Report being the "plan" of the Port, to no "present" plans, to a "hope" that eventually the Port could develop it, to "someday we will go to Jetty Island". (Appellant's Exhibit 26)

VII.

The planning staff, the Planning Commission and the City Council of Everett all were aware that:

"The Port of Everett's Comprehensive Plan (sic) does mention that a landfill at Preston Point could be a potential industrial area, and possible link to Jetty Island when the need for development occurs." (Respondent's Exhibit 1-A, page 2 of Enclosure B; Appellant's Exhibit 26, page 3)

The City therefore took express note that such a plan was "controversial" and while approving the specific permit for Preston Point took pains to declare that such approval would not constitute "an endorsement for any future program on that site" (Appellant's Exhibit 26, page 3) and expressly conditioned the shoreline management permit, in part, as follows:

". . . 3. That any proposed activity or utilization of the completed fill, or expansion of the fill area will require an environmental assessment and Shoreline Development Permit. . . .

"4. The sole intent of this Shoreline Development Permit is to allow for only the deposition of spoils acquired from the 1973 maintenance dredging of the Snohomish River by the Corps of Engineers.

"5. The approval of the Shoreline Development Permit shall not be construed as endorsement nor support for any long range development of the Everett waterfront."

VIII.

In considering the permit application regular procedures of the

FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 City were followed. The "emergency" contemplated by the Port and City
2 had to do with shoaling of the river so as to make it non-navigable for
3 commerce.

4 IX.

5 At all times material hereto, the City had not adopted any master
6 program under the Shoreline Management Act. The filling of Jetty
7 Island would not be inconsistent with the Halprin Plan for land use
8 adopted by the City; rather, a fill on the south end of Jetty Island
9 could enhance the Jetty's ultimate use, whatever that may be. The
10 City does not now have a long-range dredge disposal plan and sound
11 planning calls for such a plan in order to assess the long-range
12 environmental factors. (TR 2-19). The proposed fill at Preston Point
13 does not conflict with existing policies relating to the development
14 of the City's waterfront area. (Respondent's 1-A, Enclosure B, page 3)

15 X.

16 The dredging of the Snohomish River is for the single purpose of
17 deepening a navigational channel.

18 XI.

19 The City granted the permit after having: (1) gathered information,
20 data, and documentation regarding the environmental concerns and questions
21 of the project; (TR 3-96 et seq.; TR 3-24 et seq.) (2) evaluated,
22 considered and addressed environmental factors; (3) concluded that the
23 project had an insignificant effect upon the environment. (TR 3-122)

24 The City did not require the preparation of an environmental
25 impact statement.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

XII.

The City's environmental assessment did not consider the effect the proposed filling of the site would have upon archaeological value, if any, of the site notwithstanding the fact that evidence of such value was known to the City of Everett as early as April 27, 1971. (Appellant's Exhibit N-1a)

XIII.

The proposed fill would have no effect, because of its location, upon flooding conditions of the Snohomish River. (TR 4-123) The fill would have negligible effects upon marine life, wildlife or natural vegetation. A new beach of clean river sediment would be formed covering over the present beach and bottom now composed of bark resulting from years of log storage. The shoreline would be improved by the fill and it would eliminate an eddy of currents at the site and thus cause some improvement in the pattern of currents. (TR 4-122)

XIV.

The Port has not at any time deceived nor attempted to deceive the City nor the public as to its ultimate intentions or plans or hopes for Preston Point or Jetty Island.

XV.

S. G. Aldcroft is a City Councilman and terminal agent of the Burlington Northern Railroad at Everett. The latter's railroad trackage runs adjacent to the site. Mr. Aldcroft has been active in the community and was a member of the Snohomish County Economic Development Council, as well as co-chairman of its Transportation Committee which recommended rail service from the site to the Jetty

FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 and that the Jetty be developed as a Port industrial facility.

2 At the Council meeting at which the permit was granted,
3 Mr. Aldcroft participated therein, seconded the Motion for its approval,
4 voted to grant the permit and questioned the necessity for adopting the
5 planning staff and Planning Commission imposed condition that:

6 "The approval of the SM permit shall not be construed as
7 endorsement nor support for any long-range development
8 of the Everett waterfront."

8 XVI.

9 Ralph A. Beswick, a member of this Board as a designee of the
10 Land Commissioner, heard only the testimony adduced at the first day
11 of the hearing on this request for review. From an exhibit introduced
12 into evidence, it appeared that he, and other governmental officials,
13 met in the City of Everett at the instance of the Corps of Army
14 Engineers. (TR 2-11) At that meeting the subject matter of the
15 Preston Point fill was discussed. The Port had then not yet filed
16 its application for a shoreline management permit.

17 At the commencement of the second day of the hearing on this
18 request for review, appellant brought the above facts to the attention
19 of this Board and objected to Mr. Beswick's "presence" on the Board
20 as a representative of the Land Commissioner. Accordingly, Mr. Beswick
21 then and there withdrew and heard no further testimony. He did not
22 comment on any of the evidence, nor question any witness, nor discuss
23 the case with any Board member, nor in any way participate in the
24 hearing (except as described above) or in this decision.

25 No other person was subsequently designated by the Land Commissioner
26 to participate in this request for review.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 From these Findings, the Shorelines Hearings Board comes to these

2 CONCLUSIONS OF LAW

3 I.

4 Any Finding of Fact which should be deemed a Conclusion of Law
5 is hereby adopted as such.

6 II.

7 The substantial development permit is consistent with the Policy
8 Section of the Shoreline Management Act, the Guidelines of the
9 Department of Ecology and the master programs of the City of Everett
10 insofar as can be ascertained.

11 III.

12 The proposed project is not exempt from the permit requirements
13 of the Shoreline Management Act.

14 IV.

15 The evidence in this case does not warrant a conclusion by this
16 Board that the appearance of fairness doctrine was violated by the
17 participation of Mr. Aldcroft.

18 V.

19 The State Environmental Policy Act (SEPA) mandates all agencies of
20 the state to "preserve important historic, cultural, and natural aspects
21 of our national heritage." (RCW 43.21C.020(2)(d))

22 As pointed out in Juanita Bay Valley Com. vs. Kirkland, 9 Wn. App.
23 59:

24 "SEPA requires an Environmental Impact Statement be prepared
25 prior to the first governmental authorization of any part of
26 a project or series of projects which, when considered
cumulatively, constitute a major action 'significantly
effecting the quality of the environment.'"

27 FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

VI.

Although the Port has in fact no official plan to use the Preston Point fill as the first step toward bridging across the Snohomish River to Jetty Island, the City (as seen from Finding of Fact VII) believes to the contrary. Thus, from the City's view, and notwithstanding the precautions of conditioning the permit to the contrary, the fill is, or could be, a threshold project for which an environmental impact statement should have been required.

It is wiser in a close case, a gray area of factual determination, where construction or action would arguably have a significant effect on the environment, to order an impact statement now to avoid delay and uncertainty of repeated hearings and motions encompassing both trial and appellant jurisdiction of the state courts.

It is clear that the City of Everett did not consider an important element of SEPA in arriving at its negative impact determination. (Finding of Fact XII) Therefore, its action in granting the permit was in violation of the procedural requirements of SEPA. An environmental impact statement should be required.

Therefore, the Shorelines Hearings Board issues this

ORDER

Having failed to comply with the procedural requirements of the State Environmental Policy Act, the substantial development permit be and the same is vacated, without prejudice.

FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 DATED this 26th day of April, 1974.

2 SHORELINES HEARINGS BOARD

3 Walt Woodward
4 WALT WOODWARD, Chairman

5 W. A. Gissberg
6 W. A. GISSBERG, Member

7 Robert F. Hintz
8 ROBERT F. HINTZ, Member

9 Mary Ellen McCaffree
10 MARY ELLEN McCAFFREE, Member

11
12 TRACY J. OWEN, Member

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27 FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER